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New Castle County – Criminal Division

June 24, 2008

The Honorable Sue L. Robinson
District of Delaware
844 North King Street
Lock Box 31
Wilmington, DE 19801

Re: *Jackson v. Danberg*, Civ. Act. No. 06-300

Dear Judge Robinson:

As you requested, please find attached the current Delaware execution protocol (without attachments). The portions relevant to establishing a chain of command are located at the following points in the protocol:

On Page 1 of the *Policy of State of Delaware Department of Correction*, Bate Stamped Page 2444, at IV. POLICY, the protocol provides that: "This execution is to be carried out by the Warden-Delaware Correctional Center and supervised by the Commissioner-Department of Correction."

On Page 1 of the *State of Delaware Bureau of Prisons Procedure Manual*, Bate Stamped Page 2445, at IV.B, the protocol defines the term "Warden" used in the protocol as: "The assigned Warden of the Delaware Correctional Center who is the Commissioner's designee in charge of all aspects of an execution."

On Page 1 of the *State of Delaware Bureau of Prisons Procedure Manual*, Bate Stamped Page 2445, at V. PROCEDURE, the protocol states: "This execution shall be carried out at the Delaware Correctional Center pursuant to procedures developed by the Warden of the Delaware Correctional Center."

On Page 2 of the *State of Delaware, Delaware Correctional Center, Standard Operating Procedures*, Bate Stamped Page 2447, at IV.E, the procedure again notes that references to the Warden mean: "The assigned Warden of the Delaware Correctional Center who is the Commissioner's designee in charge of the execution."

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On Pages 2-4 of the *State of Delaware, Delaware Correctional Center, Standard Operating Procedures*, Bate Stamped Pages 2447-49, at VI.A.1, the responsibilities of the Warden are listed. Included in that list are the following directions:

- e. Assemble Departmental Execution Team and practice procedures as outlined. (Attachment #1)
- f. Obtain and handle required chemicals. (Attachment #1)
- g. Supervise, manage and direct activities of the execution of ISDP. (Attachment #1)

Respondents hope that the Court finds these references helpful.

In light of the Court's decision to directly question the expert witnesses at the scheduled September 10 hearing, respondents believe that the Court might find it helpful to have the record as it now stands before her to assist in formulating questions for the hearing. Respondents would be glad to provide any deposition transcripts or discovery materials if the Court so desires.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Elizabeth R. McFarlan', with a long horizontal flourish extending to the right.

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EMF:mah


CC: Michael Wiseman, Esquire

<p align="center">POLICY OF</p> <p align="center">STATE OF DELAWARE</p> <p align="center">DEPARTMENT OF CORRECTION</p>	<p align="center">POLICY NUMBER</p> <p align="center">2.7</p>	<p align="center">PAGE NUMBER</p> <p align="center">1 of 1</p>
<p>CHAPTER: 2 STATUTORY AND LEGAL AUTHORIZATION</p>	<p align="center">RELATED ACA STANDARDS:</p>	
<p>APPROVED BY THE COMMISSIONER:</p>	<p align="center">SUBJECT: EXECUTION</p>	
<p>EFFECTIVE DATE: August 31, 2007</p>		

- I. **AUTHORITY:** Title 11, sections 4209 (f) and 6504 (11) of the Delaware Code
- II. **PURPOSE:** To carry out the sentence for those persons sentenced to death.
- III. **APPLICABILITY:** All Department employees, volunteers, persons or organizations conducting business with the Department and inmates under the sentence of death.
- IV. **POLICY:** The Chief-Bureau of Prisons is responsible to ensure that Execution Procedures are developed by the Warden-Delaware Correctional Center to carry out the court mandated execution of an inmate sentenced to death. This execution is to be carried out by the Warden-Delaware Correctional Center and supervised by the Commissioner-Department of Correction. The Execution Procedures shall provide for imposition of the sentence of death upon the terms and conditions as set forth by the trial court and will provide for witnesses and media access at the time the execution is carried out. The procedures will provide for proper communication with the Governor and the Attorney General to assure no judicial intervention exists at the time scheduled to carry out the execution.

STATE OF DELAWARE BUREAU OF PRISONS PROCEDURE MANUAL	POLICY NUMBER 2.7	PAGE NUMBER Page 1 of 1
CHAPTER: 2 Statutory & Legal Authorization	RELATED ACA STANDARDS: SUBJECT: Execution Procedure	
APPROVED BY THE CHIEF, BUREAU OF PRISONS: <i>Richard Keamy</i>		
EFFECTIVE DATE: August 31, 2007		

- I. **AUTHORITY:**
Title 11, sections 4209(f) and 6504(11) of the Delaware Code; Department of Correction Policy 2.7
- II. **PURPOSE:**
To provide guidance regarding the responsibilities for, and the establishment of standardized procedures relating to the imposition of a court mandated execution.
- III. **APPLICABILITY:**
Those employees who are assigned responsibility for the court ordered execution of an inmate sentenced to death.
- IV. **DEFINITIONS:**
 - A. ISDP – An “inmate sentenced to the death penalty.”
 - B. Warden – The assigned Warden of the Delaware Correctional Center who is the Commissioner’s designee in charge of all aspects of an execution.
- V. **PROCEDURE:**
When an ISDP receives an execution date, the Department of Correction has the responsibility for the execution of that inmate. This execution shall be carried out at the Delaware Correctional Center pursuant to procedures developed by the Warden of the Delaware Correctional Center. The Chief – Bureau of Prisons is responsible to ensure that all necessary resources and personnel needed are available to the Warden of the Delaware Correctional Center to carry out a court ordered execution.

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		<p>CHAPTER: SECURITY EXECUTION PROCEDURE</p>	

RESTRICTED---LIMITED DISTRIBUTION

EFFECTIVE: August 31, 2007

SUMMARY of REVISION/REVIEW


This document supersedes previous standard operating procedure 2.7 dated August 1, 2005

APPROVED:




Thomas L. Carroll, Warden
Delaware Correctional Center


- I. **AUTHORITY:** Title 11, sections 4209(f) and 6504(11) of the Delaware Code; Department of Correction (DOC) Policy 2.7 and Bureau of Prisons (BOP) Procedure 2.7.
- II. **PURPOSE:** To establish standardized procedures that staff shall use to carry out the court-mandated execution of an inmate sentenced to death.
- III. **APPLICABILITY:** All employees, volunteers, persons or organizations who are assigned any responsibility or activity involving an execution of an inmate sentenced to the death penalty.
- IV. **DEFINITIONS:**
 - A. ISDP: An "inmate sentenced to the death penalty."

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- B. **Housing:** Where an adult male or female under sentence of death shall be housed in an appropriate security level at an institution as determined by the Warden.
- C. **Execution Holding Cell:** That cell or area that is reasonably isolated from general inmate population and maintained upon the confines of the Delaware Correctional Center for holding an inmate sentenced to the death penalty.
- D. **Execution Site:** An area that is located inside the secured fence of the Delaware Correctional Center for this purpose.
- E. **Warden:** The assigned Warden of the Delaware Correctional Center who is the Commissioner's designee in charge of the execution.
- V. **POLICY:** It is the policy of the Department of Correction to ensure that an execution is carried out as mandated for an inmate sentenced to the death penalty (ISDP).
- VI. **PROCEDURE:** The following activities will be completed by the designated personnel.
- A. **Responsibilities:**
1. **Delaware Correctional Center Warden**
 - a. Coordinate the following items:
 - (1) If applicable, transfer of ISDP to the Delaware Correctional Center.

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- (2) Secure list of witnesses and attorneys from the ISDP. (Attachment #2)
 - (3) Complete instructions for disposal of ISDP's property and money in the inmate's account after execution. (Attachment#3)
 - (4) Complete instructions for disposal of ISDP's remains after execution. (Attachment #4)
 - (5) Obtain list of ISDP's request for persons to visit with ISDP.
 - (6) Obtain final meal request from ISDP. (Attachment #5)
- b. Submit requests for police personnel to assist, including but not limited to, the following agencies:
- [REDACTED]
- [REDACTED]
- c. Submit requests for assistance from Departmental personnel to Bureau and Department level(s).
- (1) Warden(s) – Howard R. Young Correctional Institution, Sussex Correctional Institution, Baylor Women's Correctional Institution, Morris Community Correctional Center, Webb Correctional Facility, and Plummer Community Correctional Center.

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- (2) Correctional Emergency Response Team (CERT) .
- (3) Internal Affairs.
- d. Notify the following of the pending execution:
 - (1) Office of the Governor.
 - (2) Office of the Commissioner.
 - (3) Office of the Chief - Bureau of Prisons.
 - (4) Office of the Attorney General.
 - (5) Office of the State Medical Examiner.
- e. Assemble Departmental Execution Team and practice procedures as outlined. (Attachment #1)
- f. Obtain and handle required chemicals. (Attachment #1)
- g. Supervise, manage and direct activities of the execution of ISDP. (Attachment #1)
- h. Document and file completed reports of the execution.
- 2. Warden of facility (excluding Delaware Correctional Center) where inmate is housed (if at a location other than the Delaware Correctional Center):
 - a. Provide ISDP's witness list to Delaware Correctional Center Warden. (Attachment #2)
 - b. Provide instructions for disposal of ISDP's property and money in the inmate's account after execution. (Attachment #3)

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- c. Establish transfer procedure of ISDP to the Delaware Correctional Center.
3. Chief, Media Relations and DCC Public Information Officer:
 - a. Notify pre-approved list of witnesses in writing of date and time of scheduled execution. Prepare and submit to the Warden the listing of confirmed official witnesses.
 - b. Establish media pool. (Attachment #6)
 - (1) Compile information to be provided to media as approved by the Delaware Correctional Center Warden.
 - (2) Accompany media pool to and from the Delaware Correctional Center execution site.
4. Institutional Investigator(s), Delaware Correctional Center: Escort ISDP's and victim's family witnesses to the Delaware Correctional Center to view the execution in separate vehicles. The victim's family and ISDP's family will be kept separate at all times. The Investigators shall escort up to two adult members of the immediate family of the ISDP and two adult members of the victim's family.
5. Chief - Bureau of Prisons: Render assistance and provide the Delaware Correctional Center Warden all resources and personnel necessary to carry out a court-ordered execution.

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6. CERT:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Security Superintendent, Delaware Correctional Center:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. Security Superintendent, Delaware Correctional Center:

[REDACTED]

[REDACTED]

[REDACTED] n.

9. Chief of Security for the Department of Correction:

[REDACTED]


[REDACTED]

[REDACTED]

B. Sequence of Events: The following sequence of events will be accomplished during the identified time windows preceding an execution.

1. Between twenty-five and forty days prior to execution date:


- a. Mail: The mailroom officer(s) shall be notified in writing that an execution date has been set for a specific inmate. (Attachment #9)

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

b. Visiting Procedure:

- The Warden must authorize any exceptions to normal visiting.
- Prior to the scheduled date of execution, daily visits may be authorized in addition to the attorney of record visits,

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subject to the Warden's approval.


- After the ISDP is moved to the execution holding cell, visits shall be restricted to approved clergy and the attorney of record, unless otherwise authorized by the Warden.
- c. Telephone Privileges: The ISDP shall be afforded telephone privileges as authorized by the Warden prior to transfer to the execution holding cell. Unless directly ordered by the Warden, no telephone privileges shall be authorized following transfer of the ISDP to the execution holding cell.
- d. Monitoring: In addition to normal housing logs, officers assigned to supervise the ISDP shall maintain detailed logs of the activities of the ISDP.
- e. Crowd Control/Security:

(1)

[REDACTED]

(2)


[REDACTED]

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- (3) [REDACTED]
- (4) [REDACTED]
- (5) [REDACTED]

f. Witnesses: The number of required witnesses should be specified in the sentencing order. If unspecified, ten witnesses will be selected to attend the execution.

- (1) All witnesses, excluding the news media and required staff members, are extended an invitation from the Warden by the Chief, Media Relations. Witnesses must acknowledge their intent to attend.

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[REDACTED]

[REDACTED] The following persons will be among those invited.

- Senator of the 15th Senatorial District.
- Representative of the 28th Representative District.
- House and Senate Correction Committee Chairperson.
- Delaware State Police Superintendent or designee.
- Local Police Chief.
- Representative of Arresting Agency.
- Prosecuting Attorney.
- Delaware Violent Crime Board Representative.


g. Alternate Official Witnesses: Two alternate witnesses shall be invited and asked to stand by until the start of the execution process to provide for replacement of a primary witness in case the need arises.

h. Witnesses of ISDP: No more than two adult family members or friends of ISDP, as approved by the Warden, shall be permitted to attend the execution of the ISDP. An Institutional

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Investigator of the Delaware Correctional Center shall escort these witnesses.

- i. Victim Witnesses: Two adult members of the immediate family of the victim or his or her designee, as approved by the Warden, shall be permitted to attend the execution of the ISDP. An Institutional Investigator of the Delaware Correctional Center shall escort these witnesses. Victim witnesses and the witnesses of the ISDP will be kept separate at all times.
 - j. Media Witnesses: The DCC Public Information Officer and the DOC Chief of Media Relations shall meet with the Warden and Deputy Wardens to coordinate planned news releases and media coverage/attendance for the execution. There shall be no media visits with the ISDP or any other DCC inmates during the final thirty days prior to an execution. (Attachment #6)
 - k. ISDP Information: The Delaware Correctional Center Warden shall obtain information from the ISDP regarding ISDP's witnesses, disposition of personal property, money and remains, personal and legal visitors and request for final meal.
2. Within One Week and up to the day of execution:

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- a. The Shift Commanders who are scheduled for duty on the date and time of the impending execution shall be briefed regarding activities of the shifts.
- b. Operations will function normally, except as directed by the Warden.

(1)

[REDACTED]

(2)

[REDACTED]

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c.

(1)

(2)

(3)

d. Institutional Scheduling Officer shall complete rosters of on-duty staff (all shifts) for scheduled date of execution. [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

(1) [REDACTED]

[REDACTED]

(2) [REDACTED]

[REDACTED]

(3) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

e. Delaware Correctional Center Warden shall contact and verify the assistance of the following:

i. Correctional Emergency Response Team - [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

ii. Internal Affairs – [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iii. Security Superintendent, Delaware Correctional Center – [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iv. Warden(s) – Warden or designee shall verify that
Wardens of Howard R. Young Correctional


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Institution, Sussex Correctional Institution, Webb Correctional Facility, Morris Community Correctional Center, Plummer Community Correction Center, and Baylor Women's Correctional Institution will provide their individual assistance and available resources [REDACTED]

[REDACTED] The above-listed Wardens will report to the Delaware Correctional Center on the day/night of the execution to assist the Delaware Correctional Center Warden as assigned at times specified.


- v. State Medical Examiner – Warden or designee shall verify the availability of a representative of the Office of the Medical Examiner, reconfirm the time of the scheduled execution, and request final preparation be made to conduct an autopsy. A history of the ISDP will be given so that necessary paperwork can be started.

f. [REDACTED]


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- [REDACTED]
- [REDACTED]
- [REDACTED]
- g. The on-duty Shift Commander(s) will be responsible for normal/routine operation of the facility on date of scheduled execution. The Security Superintendent will be the on-scene commander of shift operations prior to, during, and after the execution [REDACTED]
- [REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- h. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- i. The Warden or designee shall contact the Attorney General's Office and the Governor's Office to establish telephone contact times, telephone numbers, and verification of the personnel with whom the Warden's staff will be in contact on

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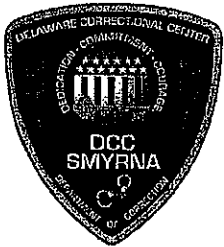
the day/night of the scheduled execution.

- j. The Warden or designee shall contact the Office of the Medical Examiner [REDACTED]

- k. The Warden or designee will contact the physician to ensure presence at the execution.


- l. The ISDP shall be notified to organize, label, and place his/her personals in a box. If the ISDP has not designated a recipient, such property shall be disposed of through existing institution procedures. The ISDP shall be given the appropriate material with which to organize, label, and box personal property at least 24 hours prior to transfer to execution holding cell. All personal property must be packaged. [REDACTED]

[REDACTED] The final inventory can be conducted by holding cell staff. All remaining property and any check for funds shall be ready for distribution immediately after the execution.

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and dress in the clothes in which he/she will be executed.

- [REDACTED]
- Designated persons shall establish telephone contact with the Governor's Office and the Attorney General's Office.
- A designated person shall establish telephone contact between the Warden's Office and the execution site.
- All witnesses (official, victim's, ISDP's, and media) shall be escorted to the execution site and into the viewing room/area as summoned by the Warden.
- [REDACTED]

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[REDACTED]

- [REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

C. Activities during an execution by Lethal Injection:

1. The Warden shall ensure that personnel required to carry out court-mandated execution are in place as indicated in Attachment #1.
2. The ISDP shall be removed from the execution-holding cell and strapped to the gurney.
3. The ISDP shall be provided the opportunity to make a final statement.
4. The execution shall be completed as provided for in Attachment #1.
5. During the execution procedure, one person shall man the telephone to the Governor's Office and one person shall man the telephone to the Attorney General's Office. Constant voice-to-voice communication shall be established and maintained throughout and after the execution. A person shall man the telephone contact between the Warden's Office and the execution site. An accounting of timed activities starting with the time the ISDP is taken from the holding cell shall be maintained. The designated personnel manning the telephones shall relay to the Governor's Office and to the Attorney General's Office this information.

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6. When the ISDP no longer exhibits signs of life, the curtain to the witness viewing room shall be closed. Once the curtain is closed, the door to the death chamber shall be unlocked and the physician shall be escorted into the death chamber. The physician shall then pronounce the ISDP dead.
7. When the ISDP has been pronounced dead, the Warden shall announce to the witnesses the time of death and shall order the witnesses to be escorted from the viewing area and returned to their respective staging areas.
8. Restraints and catheters shall be removed from the ISDP's body.
9. The ISDP will be photographed and thumb printed.
10. [REDACTED]

D. Post Execution:

1. The Warden shall complete a summary report of activities related to the execution.
2. It will be the responsibility of the Warden to maintain all documents, including but not limited to all documents required by Delaware Correctional Center Procedure 2.7 and attachments.